# In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES EX REL. FERDINAND Holzendorf, plaintiff in error, *v.* JOHN HAY, SECRETARY OF STATE. } No. 210.

*IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.*

## BRIEF IN BEHALF OF DEFENDANT IN ERROR.

### STATEMENT.

The relator, Ferdinand Holzendorf, filed in the supreme court of the District of Columbia a petition praying that the writ of mandamus issue to John Hay, Secretary of State, "commanding and requiring him forthwith to institute vigorous and proper proceedings against the Empire of Germany, or Kingdom of Prussia, or both; that is to say, against the Emperor, for the recovery of five hundred thousand dollars ($500,000) damages in behalf of your petitioner."

It alleged (R., 1-2):

> Relator is a native of Germany, but by naturalization a citizen of the United States, and

entitled to protection and redress against any and all losses, insults, wrongs, injuries, and damages sustained by him while sojourning in any foreign country, but nevertheless while bearing the passport of the United States he was falsely imprisoned in an asylum for the insane at Dalldorf, near Berlin, and there most oppressively and unjustly detained from May, 1898, until July, 1899, when, by the highest court of Berlin (the Landgeriche), he was declared to be and to have been sound in mind and body. The Department of State, through John Hay, its Secretary, refuses to proceed on the part of the United States to seek to obtain redress of grievances in behalf of relator, to the manifest failure of justice, against the policy and dignity of the United States, and in derogation of the rights, privileges, and immunities of all citizens thereof. Relator has not been lax or remiss in his efforts, through the Department of State, to obtain redress against the country which so unjustly used him, but has persistently pressed the legation at Berlin, the State Department, and the President for vindication of his rights as a citizen of the United States.

He further says there are on file in the Department of State certain papers relevant to the injuries endured by him, some of which may be deemed relevant to his just claims, namely, "transcript of that decision of the said court, Landgeriche, in favor of your petitioner, which is marked as 'Exhibit B' in or concerning the report of Andrew D. White, our ambassador at Berlin."

The petition was deemed by the trial court insufficient to justify the issuance of a rule to show cause why a writ of mandamus should not issue as prayed, and it adjudged that the application be denied and petition dismissed. (R., 3.)

From such judgment an appeal was taken to the court of appeals of the District of Columbia, where the action of the trial court was affirmed. (R., 9.) The opinion of the court is in the record at page 7 et seq.

Thereupon a writ of error from this court was sued out and an attempt made to bring the cause here for review. No assignment of error appears in the record.

Chapter 42, Code District of Columbia (31 Stat., 1390):

> SEC. 1273. All applications for granting writs of mandamus shall be commenced by petition, verified by affidavit of the applicant, setting forth fully the ground of his application.
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> SEC. 1274. Upon the filing of such petition the court may lay a rule requiring the defendant therein named to show cause, within such time as the court may deem proper, why a writ of mandamus should not issue as prayed, a copy of which rule shall be served upon such defendant by a day to be therein limited.
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> SEC. 1275. The defendant, by the day named in such order, unless for cause shown the court shall extend the time, shall file an answer to such petition, fully setting forth all the defenses upon which he intends to rely in resisting such application, which shall be verified by his affidavit.

## ARGUMENT.

### THIS COURT HAS NO JURISDICTION, AND THE WRIT OF ERROR SHOULD BE DISMISSED.

The jurisidiction of this court to review judgments of the court of appeals of the District of Columbia is based upon sections 233 and 234 of the act of March 3, 1901 (31 Stat., 1227, c. 854):

> SEC. 233. Any final judgment or decree of the court of appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as existed in cases of writs of error on judgments or appeals from decrees rendered in the supreme court of the District of Columbia on February ninth, eighteen hundred and ninety-three, and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States.
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> SEC. 234. In any case heretofore made final in the court of appeals it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to said Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to said Supreme Court.

The matter in dispute in the present cause does not exceed the sum of $5,000; nor is there involved the validity of any patent or copyright, or drawn in question the validity of a treaty or statute of or an authority exercised under the United States. (*Baltimore & Potomac Railroad Co.* v. *Hopkins*, 130 U. S., 210, 226; *United States* v. *Lynch*, 137 U. S., 280, 285; *South Carolina* v. *Seymour*, 153 U. S., 353, 360.)

THE ACTION OF THE LOWER COURT WAS RIGHT UPON THE MERITS.

The supreme court of the District heard the cause upon the original petition and argument of counsel, and was of opinion that the petition was insufficient to justify the issuance of a preliminary rule, and therefore dismissed the same. (R., 3.)

The following grounds for such action were assigned:

> 1. No clear legal right on the part of the petitioner to the writ is made to appear from the petition.
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> 2. No clear legal duty on the part of the Secretary of State to perform the acts required is made to appear.
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> 3. The matters involved concern the political department of the Government.
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> 4. Said performance would require the exercise of official discretion on the part of the Secretary, and they are not of a ministerial character.

Where it appears from the face of the petition itself that the writ of mandamus should *not* issue, it seems

manifest that no preliminary rule should be made requiring the defendant to show cause why it should not issue. If petitioner, upon his own showing, clearly has no right to the remedy asked, neither the court nor the defendant should be required to give the matter further consideration.

Sections 1273 et seq. of the Code of the District of Columbia (31 Stat., 1390) must necessarily be construed to authorize a preliminary rule in case the petition makes a *prima facie* case and not otherwise.

While the court below failed to issue the rule that action was within its legal discretion properly exercised. The law does not require a vain or foolish thing, and no good reason can exist why the court should issue a preliminary rule when no ground for the remedy finally sought has been shown.

The trial justice was clearly correct when he said that no clear legal duty on the part of the Secretary of State to perform the acts demanded was made to appear by the petition. It is vague, incoherent, argumentative, unsatisfactory, and altogether insufficient.

The matter involved concerns the political department of the Government. Claims of citizens of one nation against another for injuries suffered are not enforced by courts of law. The whole subject of the relation of American citizens to foreign governments is under the general control of the President, and his action in reference thereto can not be controlled by the courts through writs of mandamus.

Whether the President or his representative, the Secretary of State, will press the claim of a citizen of the United States for damages upon the attention of a foreign government is discretionary. The propriety of such action depends upon a multitude of facts which must be considered, involves the exercise of judgment and discretion, and is therefore beyond the control of the courts. (9 Opinions of the Attorney-General, 338; *Boynton* v. *Blaine*, 139 U. S., 306.)

THE DEFENDANT IN ERROR RESPECTFULLY ASKS THAT THE WRIT OF ERROR BE DISMISSED FOR WANT OF JURISDICTION.

J. C. MCREYNOLDS,
*Assistant Attorney-General.*

WASHINGTON, *April, 1904.*

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